Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996	)	CS Docket No. 96-85

REPLY COMMENTS OF U S WEST

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U S WEST, Inc. ("U S WEST") herein replies to the comments filed in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking in the above-captioned action.[1]

I. INTRODUCTION AND SUMMARY

In implementing Cable Act reform, the Commission can best serve the purpose and intent of Congress in passing the Telecommunications Act of 1996[2] in two simple ways: 1) where the 1996 Act is unambiguous, do not stray from the express language of the Act or the clear intent of Congress; and 2) where interpretation is necessary always favor the promotion of competition over the creation of additional regulation. These two tenets will serve both the marketplace

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[1] In the Matter of Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, CS Docket No. 96-85, Order and Notice of Proposed Rulemaking, FCC 96-154, rel. Apr. 9, 1996 ("NPRM").

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act" or "Act").

and the Commission well as two landscapes that were once separate -- telephony and cable -- meld together to form the new world that is multimedia telecommunications. Congress recognized the importance of encouraging competition in passing the 1996 Act. The Commission should move to further enhance, rather than encumber, competition by limiting the amount and duration of any regulatory burdens necessary to implement the Act's provisions.

Various commenters in this proceeding, and in some cases the Commission itself, have suggested many requirements beyond what the 1996 Act expressly provides.[3] The Commission's proposals seem to be an attempt to retain some level of regulatory control and decision-making over the competitive process and appear to be the vestiges of years of comprehensive regulation. Commenters' proposals are more self-serving and would have the Commission use its regulatory authority to provide competitive advantage. Neither of these objectives is appropriate going forward. A "less-is-more" approach to regulation, favoring competition and balancing the interests of all parties, should be the focus of the Commission in this proceeding.

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[3] Comments filed June 4, 1996, referenced herein include: Bell Atlantic Corporation and Bell Atlantic Video Services Company ("Bell Atlantic"); BellSouth Corporation ("BellSouth"); Cox Communications, Inc. ("Cox"); Greater Metro Cable Consortium ("Greater Metro"); The National Cable Television Association, Inc. ("NCTA"); New Jersey Division of the Ratepayer Advocate (filed June 3, 1996) ("New Jersey Ratepayer Advocate"); New York City Department of Information Technology and Telecommunications ("New York City"); Tele-Communications, Inc. ("TCI"); Time Warner Cable ("Time Warner"); United States Telephone Association ("USTA"); U S WEST.

In these reply comments, U S WEST focuses on areas where parties have made proposals which either foster increased competition or would serve to impede it. Because of its various interests in both telephony and cable, U S WEST believes that it brings a balanced position to this proceeding. U S WEST urges the Commission to develop a similar approach and allow the marketplace to be the primary regulator for competitive services going forward.

II. U S WEST SUPPORTS THE NCTA PROPOSALS FOR THE ADOPTION OF PROCEDURAL GUIDELINES FOR CABLE OPERATORS TO DEMONSTRATE EFFECTIVE COMPETITION IN A FRANCHISE AREA

In its comments, NCTA has proposed certain procedural guidelines for cable operators wishing to demonstrate effective competition in a given franchise area.[4] U S WEST agrees that such guidelines are important to establish the presence of effective competition without significant regulatory interference or delay. While U S WEST does not agree that cable operators should be deregulated immediately upon the filing of a petition for relief, a process for the review of such filings is important to ensure that cable operators have a level of certainty as to the time anticipated for approval.

U S WEST specifically supports NCTA's proposal that effective competition petitions be deemed granted where either 1) all relevant local franchise authorities ("LFA") have concurred in the petition as filed, or 2) the petition is unopposed at the

[4] NCTA at 22-23.

Commission after a maximum 30-day public notice period. U S WEST additionally supports NCTA's proposal that in cases where the petitions are opposed, the Commission either issue a ruling within 90 days from the date that the petition was filed or the petition will be deemed granted.[5] Such timetables provide a level of certainty to cable operators facing competition, that Congress deemed to be effective, who deserve the relief mandated.

U S WEST agrees that LFAs should be required to make affirmative decisions as to effective competition petitions within 30 days of filing. The appeal process suggested by NCTA also appears to be reasonable where the LFA has denied a cable operator's petition.[6] That process would allow an expedited appeal to the Commission. An operator would have 15 days to file its appeal to the Commission with a 15-day period for oppositions and a seven-day period for replies.

Finally, U S WEST agrees that a petition for effective competition should stay and ultimately be a defense to an otherwise valid Cable Programming Service Tier ("CPST") rate complaint.

III. U S WEST SUPPORTS TIME WARNER'S PROPOSALS FOR THE SURVIVABILITY OF DEREGULATION FOR SMALL CABLE SYSTEMS ACQUIRED BY LARGER OPERATORS

Time Warner proposes that the Commission not act to reregulate a small cable operator which has applied previously and been granted small system

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[5] Id.

[6] Id. at 24.

regulatory relief after acquisition of that small cable operator by a larger operator.[7] U S WEST supports Time Warner's proposal that small system eligibility be assessed as of a specific date, such as February 8, 1996. It is important that small systems be given the regulatory flexibility required for their growth and economic development. As Time Warner notes, this regulatory forbearance approach simply accelerates the date for the sunset of upper tier regulation for small operators.[8] To require a small cable system which is acquired by a larger operator to be reregulated during this short transition period would be a waste of operational and administrative resources. There are no significant regulatory or economic benefits to be gained by requiring reregulation in these cases.

Time Warner also proposes that, even if the small operator which is acquired is not allowed regulatory forbearance, the Commission provide that the small system rate in effect at the time of acquisition is the permitted rate going forward. Any future rate increases would be governed by the price cap methodology applicable to the acquiring company.[9] U S WEST also supports these proposals. It would not make sense for a small system to be subject to the entire panoply of large system rate regulation for a time period which grows shorter with each passing day. Again, the operational and administrative costs far exceed any potential subscriber benefit to be gained from such a requirement. Equity and common sense dictate that the Commission find accordingly.

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[7] Time Warner at 44-46.

[8] Id. at 44.

[9] Id. at 46.

IV. U S WEST AGREES THAT LOCAL EXCHANGE CARRIERS ("LEC") SHOULD HAVE THE SAME ACCESS TO PROGRAMMING AS OTHER MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS ("MVPD")

USTA and BellSouth raise the issue of program access as it relates to a cable operator's petition for effective competition in a franchise area.[10] USTA and BellSouth suggest that the Commission not confer a finding of effective competition in areas where a common carrier does not have the same access to programming as other MVPDs. U S WEST agrees that program access is important for competition to develop fully. However, U S WEST would not go so far as to require a showing of equivalent program access in an effective competition proceeding.

Here again, it is important that the Commission not expand on the language and specific requirements contained in the 1996 Act. The new "fourth" test for effective competition simply requires that a LEC or its affiliate offer "comparable" video programming directly to subscribers. The legislative history demonstrates that Congress intended comparable to mean "access to at least 12 channels of programming, at least some of which are television broadcast signals."[11] Nowhere in the legislation is it indicated that Congress intended that all programming be the same. The Commission should not add such a condition to the test for effective competition where such condition is not expressly provided in the statute.

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[10] USTA at 3-4; BellSouth at 1-3.

[11] Conference Report on S. 652, 104th Congress, 2d Session at 170.

Furthermore, this issue is now essentially moot as the Commission has recently held that Open Video System ("OVS") providers are MVPDs for the purposes of the program access rules.[12] This ruling basically provides LEC OVS operators the same access to programming as other video programming providers. Through this ruling, LEC OVS operators also have access to the Commission's adjudicatory process for program access complaints. Should a LEC believe that it has been discriminated against by a satellite programming vendor, it now has sufficient remedies to address such issues. The Commission need not add conditions to the effective competition test where it has already provided a sufficient solution to address any potential program access issues.

V. U S WEST REITERATES ITS SUPPORT FOR A SHORTER TIME PERIOD FOR LFAS TO FORWARD CABLE PROGRAMMING SERVICE RATE COMPLAINTS TO THE COMMISSION

In its comments, U S WEST noted that the 1996 Act revised the procedure for filing CPST rate complaints with the Commission.[13] Under the provisions of the Act, a subscriber may no longer file a CPST rate complaint directly with the Commission.[14] Instead, subscribers must now file their complaints directly with

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[12] See In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, Second Report and Order, FCC 96-249, rel. June 3, 1996 ¶ 196.

[13] Comments of U S WEST at 7-9. See also 1996 Act, 110 Stat. at 115 § 301(b)(1), amending 47 USC § 543(c).

[14] As such, U S WEST also supports the Commission's determination that the Cable Services Bureau address and telephone number be removed from subscribers' monthly bills.

their LFA. Subscriber complaints must be received by the LFA within 90 days of a CPST rate increase by the cable operator. The LFA, upon receiving multiple subscriber complaints, is then permitted to file a complaint with the Commission. In the NPRM, the Commission proposed allowing an LFA an additional 90 days in which to file such a complaint.[15]

U S WEST herein reiterates its proposal for a shortened timeframe for the filing by LFAs of subscriber complaints. A more reasonable amount of time for such forwarding of complaints is 45 days. This provides a total of 135 days for the Commission to receive subscriber rate complaints. In its comments, Cox suggests a similar 135-day time period, noting it would hasten the resolution of rate disputes and still afford LFAs ample time for review.[16] U S WEST agrees with Cox that "[s]peedier resolution of rate disputes would unquestionably serve the public interest."[17] Forty-five days are certainly enough, given that the LFA is acting simply as a conduit.

On the other hand, New Jersey Ratepayer Advocate requests that the time allowed to file subscriber complaints with the Commission be extended.[18] Other parties have requested that no time period be set for such complaints.[19] In its comments, Greater Metro suggests that the 90-day time period does not allow

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[15] NPRM ¶ 79.

[16] Cox at 16-17.

[17] Id. at 17.

[18] New Jersey Ratepayer Advocate at 10-11.

[19] See, e.g., Greater Metro at 2; New York City at 16.

ample time for it to review the complaints, hold hearings, and forward the verified complaints to the Commission.[20] These LFAs have simply misunderstood what is required of them under the provisions of the 1996 Act. All they are required to do is receive and forward subscriber rate complaints, first to the cable operator for a response, and then on to the Commission for adjudication. No LFA hearings or other review processes are necessary or appropriate, and 45 days are certainly adequate to perform this limited ministerial function.

Finally, as proposed by TCI in its comments, U S WEST agrees that the Commission should continue to require subscribers to submit rate complaints on FCC Form 329.[21] Form 329 has provided the Commission and cable operators with a valuable tool to identify valid rate complaints as opposed to other types of complaints over which the Commission has no jurisdiction. It is important for the Commission to continue to provide cable subscribers with a simple mechanism for filing rate-based complaints. The instructions on Form 329 should be modified to be consistent with the provisions of the 1996 Act which require complaints to first go to LFAs for administrative review and processing.

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[20] Greater Metro at 2-3.

[21] TCI at 25.

VI. THE COMMISSION SHOULD BALANCE THE REGULATORY BURDEN ON COMPETITORS BY MINIMIZING THE BURDEN EQUALLY FOR ALL PROVIDERS

Bell Atlantic suggests that the Commission can best promote the deployment of advanced telecommunications services by ensuring that competing providers of telecommunications services face equivalent regulatory burdens.[22] U S WEST agrees that equal treatment is necessary for competition to flourish in fully competitive markets. However, instead of imposing additional regulation on competitors in these situations, U S WEST would propose that the Commission simply remove the regulatory burdens for all providers. Bell Atlantic states that "[i]mposing burdens on one competitor not shared by others will discourage competitive investment in the market." U S WEST would maintain that over-regulation in general discourages competitive investment in the market. In competitive situations, the Commission should allow market forces to provide the majority of oversight.

Bell Atlantic requests that the Commission impose the same requirements on cable operators that it imposes on LECs which employ integrated networks to provide both cable and telephony services.[23] Bell Atlantic specifically cites the Commission's Part 64 cost allocation rules as an example. U S WEST does not believe that such equivalent regulatory treatment for new entrants is necessary or

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[22] Bell Atlantic at 3.

[23] Id.

appropriate, no more appropriate than labeling a telephone company entering the video marketplace as a dominant provider. Regulations applicable to new entrants should be minimal. Additionally, the majority of regulation on incumbent providers should be eliminated soon after competitors have entered the market.

VII. THE 1996 ACT RESTRICTS AN LFA'S AUTHORITY TO IMPOSE TECHNICAL STANDARDS GREATER THAN THOSE IMPOSED BY THE COMMISSION

Several commenters correctly point out that the 1996 Act limits the authority of LFAs to regulate cable system technical standards going forward.[24] The 1996 Act specifically amends section 624(e) of the Communications Act which previously provided the LFAs with such authority.[25] The legislative history of the amendment to Section 624(e) clearly demonstrates Congress' intent to preclude local regulatory involvement in the areas of technical standards, customer equipment, and transmission technologies.[26] No other reading is possible or appropriate. The same limitations imposed by this amendment should apply equally to a cable operator's offering of telephony services over its cable network. Compliance with Commission standards in either area should be all that is required for cable operators going forward.

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[24] See, e.g., NCTA at 49-53; Time Warner at 46-52; Cox at 18-20; TCI at 27-32.

[25] 1996 Act, 110 Stat. at 116 § 301(e) amending 47 USC § 544(e).

[26] Conference Report on S.652, 104th Congress, 2d Session at 168.

VIII. CONCLUSION

In passing the Cable Act Reform provisions of the 1996 Act, Congress sent a clear message that competition, where it exists, is the preferred approach for market oversight. The Commission can best implement the intent of Congress in this proceeding by promoting full competition and limiting the amount of regulation applicable to competitive areas. Parity of regulation is important; however, once competition exists, the need for most regulation disappears. U S WEST urges the Commission to adopt rules in this proceeding which foster the growth of competition and allow providers to compete with a minimum of regulatory oversight. A flexible, market-oriented approach will serve both the Commission and video programming subscribers well as the new age of multimedia telecommunications emerges.

Respectfully submitted,

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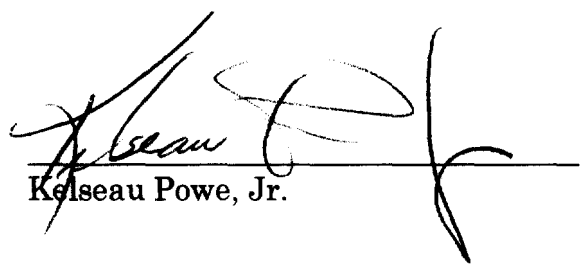
June 28, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 28th day of June, 1996, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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